

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SHAWN HORTON,)	4:10CV3155
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
ROBERT HOUSTON,)	
)	
Respondent.)	

Petitioner has filed a Petition for Writ of Habeas Corpus under [28 U.S.C. § 2254](#), a Motion for Leave to Proceed in forma pauperis, and a copy of his institutional trust account statement.

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. [28 U.S.C. § 1914\(a\)](#). The court has reviewed the Motion for Leave to Proceed in forma pauperis pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#). (The court recognizes that the provisions of [28 U.S.C. § 1915\(b\)](#) do not apply to habeas cases. See [Malave v. Hedrick](#), 271 F.3d 1139, 1139-40 (8th Cir. 2001).) Because Petitioner's trust account statement shows that Petitioner had an average monthly balance of \$100 or more in Petitioner's account for the six-month period immediately preceding the filing of the Petition, the court concludes that Petitioner must be required to pay the \$5.00 filing fee because Petitioner has the financial ability to do so. See [28 U.S.C. § 1915\(a\)](#).

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Proceed in forma pauperis (filing no. [2](#)) is denied.

2. Petitioner shall have until September 20, 2010, to pay the \$5.00 filing fee. Petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice.

3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: September 20, 2010: deadline for Petitioner to pay \$5.00 filing fee.

4. No further review of this case will take place until the filing fee is paid.

DATED this 20th day of August, 2010.

BY THE COURT:

Richard G. Kopf

United States District Judge

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